

UNITED STATES DISTRICT COURT

for the
Middle District of North Carolina

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
In the Matter of the Use of a Cell-Site Simulator to
Identify the Cellular Devices Used by Nester
Gutierrez-Gonzalez

Case No. 1:18MJ246-1

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):
Nester Gutierrez-Gonzalez

located in the Middle District of North Carolina, there is now concealed (identify the person or describe the property to be seized):
a telephone or telephones used to conduct drug transactions (See Attachment A)

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

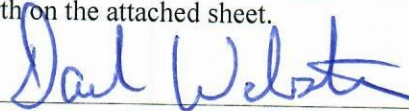
The search is related to a violation of:

Code Section
21 USC 846, 841

Offense Description
conspiracy to distribute controlled substances and possession with intent to distribute a controlled substance

The application is based on these facts:
See attached affidavit. To ensure technical compliance with the Pen Register Statute, 18 USC §§ 3121-3127, this warrant also functions as a pen register order.

- ☒ Continued on the attached sheet.
- ☒ Delayed notice of 30 days (give exact ending date if more than 30 days:) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

David L. Webster, SA DEA

Printed name and title

Sworn to before me and signed in my presence.

Date: 8/3/18 8:45 A.M.

City and state: Durham, North Carolina



Judge's signature

Joe L. Webster, United States Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

IN THE MATTER OF THE USE OF A
CELL-SITE SIMULATOR TO IDENTIFY
THE CELLULAR DEVICE(S) CARRIED
BY NESTER GUTIERREZ-GONZALEZ

Case No. 1:18MT246-1

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, **Special Agent David L. Webster**, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 to authorize law enforcement to employ an electronic investigative technique further described in Attachment A, in order to identify the cellular device or devices carried by **Nester Gutierrez-Gonzalez** (the "Target Cellular Device").

I am a Special Agent with the Drug Enforcement Administration, and have been since September 14, 1998. I am currently assigned to the Drug Enforcement Administration (DEA) Greensboro Resident Office. I have attended numerous training programs related to drug trafficking, and I am experienced in investigating drug traffickers. I am familiar with the use of various forms of electronic surveillance as an investigative tool. I have participated in investigations involving cocaine hydrochloride (HCl), cocaine base (crack), methamphetamine, marijuana, heroin, and various other controlled substances. I have participated in investigations involving, but not limited to, physical surveillance, undercover transactions, court ordered pen registers, the use of wire and electronic communication interceptions, and both state and federal search warrants. I have

received training and experience in the investigation of drug trafficking, including, but not limited to, street-level drug enforcement; narcotics interdiction; and wiretap investigations. Through my training, education, and work experience, I have become familiar with the manner in which drug trafficking violations are committed. I know through my experience investigating the captioned case as well as previous cases that drug traffickers will often possess and utilize multiple electronic devices to support their drug trafficking activities and to conceal these activities from detection by law enforcement.

1. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

2. This Court has authority to issue the requested warrant under Federal Rule of Criminal Procedure Rule 41(b)(1) & (2) because the Target Cellular Device is currently believed to be located inside this district because the Target Cellular Device's owner lives at 221 Friendship Church Road, Lexington, North Carolina, which is located in this district. Pursuant to Rule 41(b)(2), law enforcement may use the technique described in Attachment A outside the district provided the device is within the district when the warrant is issued.

3. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of 21 U.S.C. 841(a)(1) and 21 U.S.C. 846; have been committed, are being committed, and will be committed by **Nester Gutierrez-Gonzalez**. There is also probable cause to believe that the identity of the Target Cellular Device(s) will constitute evidence of those criminal violations. In addition, in order to obtain additional evidence relating to the Target

Cellular Device(s), its user, and the criminal violations under investigation, law enforcement must first identify the Target Cellular Device(s). There is probable cause to believe that the use of the investigative technique described by the warrant will result in officers learning that identifying information.

4. Because collecting the information authorized by this warrant may fall within the statutory definitions of a “pen register” or a “trap and trace device,” *see* 18 U.S.C. § 3127(3) & (4), this warrant is designed to comply with the Pen Register Statute as well as Rule 41. *See* 18 U.S.C. §§ 3121-3127. This warrant therefore includes all the information required to be included in a pen register order. *See* 18 U.S.C. § 3123(b)(1).

PROBABLE CAUSE

5. Beginning in March 2018, your Applicant initiated an investigation into the drug trafficking activities of two individuals that were later identified as Octavio SAUCEDO-ORROSTIETA and Nester GUTIERREZ-GONZALEZ. Two confidential sources hereinafter referred to as (CS-1) and (CS-2) provided information to the Applicant and other members of the DEA that SAUCEDO-ORROSTIETA and GUTIERREZ-GONZALEZ were distributing kilogram amounts of cocaine hydrochloride and methamphetamine in Lexington, North Carolina. CS-1 and CS-2 have been proven reliable and credible based on previous unrelated investigations.

6. In March 2018, surveillance was conducted in the area at Friendship Church Road and Highway 150, Lexington, North Carolina. On that date, a green Nissan Altima that had previously been identified as being utilized by SAUCEDO-ORROSTIETA was observed parked

behind 213 Friendship Church Road. Surveillance also observed a white Hummer, Cadillac Escalade, and Pontiac Torrent parked at the back of 221 Friendship Church Road. During the surveillance, SAUCEDO-ORROSTIETA was observed leaving his trailer driving his Nissan Altima. Members of the North Carolina Highway Patrol (NCSHP) conducted a traffic stop on SAUCEDO-ORROSTIETA for a traffic violation. SAUCEDO-ORROSTIETA, not licensed to drive in the State of North Carolina, provided the NCSHP Troopers with a Mexican driver's license and a Mexican voter identification card. During the course of the traffic stop, the Troopers observed that SAUCEDO-ORROSTIETA was evasive concerning biographical questions. Initially, SAUCEDO-ORROSTIETA told the Troopers that he lived at the address listed on the registration for the vehicle. The vehicle was registered to Martin Vera of 2625 Nebo Road in East Bend, North Carolina. SAUCEDO-ORROSTIETA later stated that he lived in Lexington, North Carolina, but did not know his address. SAUCEDO-ORROSTIETA also told the Troopers that he worked at a Mayflower Seafood restaurant in Winston-Salem, North Carolina, although surveillance had been observing him working at the Stone Creek Seafood Shack in Lexington, North Carolina. After SAUCEDO-ORROSTIETA was released from the traffic stop he contacted CS-1 and advised CS-1 that he was changing his telephone number due to being stopped by law enforcement.

7. In April 2018, surveillance was conducted in the vicinity of Friendship Church Road and Highway 150, Lexington, North Carolina. During the course of surveillance, a green Altima was parked at the back of 213 Friendship Church Road, and a white Hummer, Cadillac Escalade, and Pontiac Torrent were parked at the back of 221 Friendship Church Road. During that surveillance, a Hispanic male, later identified as GUTIERREZ-GONZALEZ, was observed leaving from 221 Friendship Church Road, operating the white Hummer, and returning to 221

Friendship Church Road at a later time. Through surveillance and information received from CS-1, the applicant learned that GUTIERREZ-GONZALEZ worked at the Stone Creek Seafood Shack, which is close to the corner of Hwy 150 and Friendship Church Road near Lexington, North Carolina. Surveillance also observed GUTIERREZ-GONZALEZ coming and going from 221 Friendship church Road and the seafood restaurant in an apron.

8. In May, 2018, under the direction of investigators, CS-1 arranged to make a purchase of one kilogram of methamphetamine from SAUCEDO-ORROSTIETA. Prior to the purchase, surveillance was established in the area of Friendship Church Road and Highway 150 in Lexington, North Carolina. During that surveillance, SAUCEDO-ORROSTIETA was observed leaving his trailer, operating the Nissan Altima. Upon arrival at the pre-determined meet location, which was a business in High Point, North Carolina, SAUCEDO-ORROSTIETA arranged, via telephone calls overheard by CS-1, to have the methamphetamine delivered to the meet location. SAUCEDO-ORROSTIETA told CS-1 the drug courier would be responding from the Siler City area of North Carolina. The delivery vehicle arrived at the meet location in High Point and was observed to be a black Dodge Caliber, with a 30-day temporary registration. An unknown male exited the vehicle from the passenger's side and entered the business and met with CS-1. The conversation during the meeting and purchase of methamphetamine was recorded by law enforcement officers. Once the delivery of the methamphetamine was completed, surveillance followed the Dodge Caliber from High Point to Lee County, North Carolina. Due to the rural geography of the area, surveillance was discontinued at that point because it was unsafe to continue.

9. In May 2018, CS-1 was contacted by GUTIERREZ-GONZALEZ from telephone number 336-837-8240. GUTIERREZ-GONZALEZ arranged to meet with CS-1 at a restaurant in High Point, North Carolina. During the meeting, GUTIERREZ-GONZALEZ knew about CS-1 purchasing the kilogram of methamphetamine from SAUCEDO-ORROSTIETA. SAUCEDO – ORROSTIETA had brokered the methamphetamine from a source other than GUTIERREZ-GONZALEZ. GUTIERREZ-GONZALEZ told CS-1 that SAUCEDO-ORROSTIETA was not capable of delivering large amounts of drugs on a consistent basis and offered to supply CS-1 with trafficking quantities of cocaine hydrochloride, methamphetamine and marijuana. GUTIERREZ-GONZALEZ advised CS-1 that he is part of a drug trafficking organization that receives drugs directly from Mexico and distributes same throughout the United States, in particular, North Carolina. During the meeting, CS-1 observed that GUTIERREZ-GONZALEZ had two mobile telephones in his possession.

10. In June 2018, CS-2 was interviewed regarding Nestor GUTIERREZ-GONZALEZ and his co-conspirators. CS-2 stated he/she knew GUTIERREZ-GONZALEZ through a relative of CS-2. CS-2 stated GUTIERREZ-GONZALEZ lived in Reidsville, North Carolina, before moving to the Winston-Salem area after CS-2's relative was arrested with five (5) kilograms of cocaine. CS-2 stated he/she knew GUTIERREZ-GONZALEZ as "Tito" and identified him in a photograph provided by investigators. CS-2 stated GUTIERREZ-GONZALEZ was violent and carried a .357 caliber revolver in the waistband of his pants. CS-2 stated that he/she had purchased kilogram quantities of cocaine from GUTIERREZ-GONZALEZ in the past and that GUTIERREZ-GONZALEZ told CS-2 that he was capable of distributing approximately 20 kilograms of cocaine, 10 kilograms of heroin, 10 kilograms of methamphetamine, and 2,500

pounds of marijuana each week. CS-2 stated GUTIERREZ-GONZALEZ told CS-2 that he, and others unknown to CS-2, received loads at a location near Charlotte, North Carolina.

11. In June, 2018, CS-2 met with GUTIERREZ-GONZALEZ on Friendship Church Road in Lexington, North Carolina. According to CS-2, GUTIERREZ-GONZALEZ wanted CS-2 to take an ounce of methamphetamine and an ounce of cocaine back to the area where CS-2 lived, as samples of what GUTIERREZ-GONZALEZ could deliver. CS-2 stated that GUTIERREZ-GONZALEZ provided CS-2 with his (GUTIERREZ-GONZALEZ's) telephone number as (336) 423-7693, which was a different number from the previous ones provided.

12. In July, 2018, your Applicant contacted Homeland Security Investigations (HSI) Special Agent Edward Angeo, who was assigned to the Los Angeles High Intensity Drug Trafficking Area (HIDTA) group covering Orange County, CA. The Applicant told SA Angeo that he identified a commonly called telephone number between Nester GUTIERREZ-GONZALEZ and a telephone that SA Angeo's group had been intercepting as part of a Federal Wiretap Order. Your Applicant told SA Angeo that the number was (336) 575-0455. SA Angeo said he was familiar with the number as belonging to an unidentified drug courier that was communicating with one of their targets named Felix SALGADO. SA Angeo stated that on July 4, 2018, SALGADO called the unidentified courier and they used coded language to discuss the transfer of suspected drug proceeds through a bank account. SA Angeo said that SALGADO and the courier also discussed a shipment of drugs that was going to Atlanta, and SALGADO informed the boss in Mexico that the money had been sent. SA Angeo's investigation is focusing on distributions from California to Hawaii and other parts of the United States. There has not been a direct connection established between Nester GUTIERREZ-GONZALEZ and Felix SALGADO. Agents/officers believe that based on the information received from SA Angeo, GUTIERREZ-

GONZALEZ may be utilizing the same methods to send drug money back to Mexico that is currently being used by SALGADO and his organization.

13. In July, 2018, CS-1 provided number (336) 624-0709 to Detective Williams as a new number for GUTIERREZ-GONZALEZ. According to CS-1, GUTIERREZ-GONZALEZ contacted CS-1 and advised CS-1 that (336) 624-0709 was a new telephone number for GUTIERREZ-GONZALEZ. Agents/Officers examined phone toll records and performed a common call analysis between (336) 624-0709 and GUTIERREZ-GONZALEZ'S current number of (336) 423-7693. Agents/officers observed five (5) common calls between both numbers. Based on GUTIERREZ-GONZALEZ telling CS-1 that (336) 624-0709 was his new telephone number, and the common call analysis conducted by investigators, your Applicant submits that there is probable cause to believe that GUTIERREZ-GONZALEZ utilizes multiple telephone numbers to engage in drug trafficking.

14. During this investigation, your Applicant obtained toll records on several of the telephone numbers associated with GUTIERREZ-GONZALEZ and SAUCEDO-ORROSTIETA. Your Applicant periodically reviewed the toll information and discovered that some of the target numbers were no longer being used or were not in contact with any numbers directly associated with Mexico or other significant drug suppliers.

15. Based on the facts presented above, your Applicant knows GUTIERREZ-GONZALEZ has utilized and continues to utilize multiple telephone numbers/devices to support his drug trafficking organization. In addition, your Applicant believes GUTIERREZ-GONZALEZ possesses additional telephone numbers/devices that have not been identified during this investigation. In conjunction with this, your Applicant and other case agents have not been able to establish a pattern used by GUTIERREZ-GONZALEZ in which he changes or

discontinues use of his phone numbers. Based on this information, it is necessary to identify all the telephone numbers/devices being utilized by GUTIERREZ-GONZALEZ so that records about those cellular devices can be obtained, due to their pertinence to this investigation.

16. Your Applicant also knows through training and experience that drug traffickers will often use different phone numbers or activate new phone numbers periodically in an effort to prevent law enforcement from intercepting their calls. Drug traffickers will also utilize several different phone numbers to compartmentalize their drug clients and sources of supply and keep them separate from each other in case their phones are confiscated by law enforcement. Your Applicant has also discovered through experience that drug traffickers will often utilize pre-paid cellular phones that are purchased and activated without providing subscriber information. These phone are often referred to as “drop phones” because the phone cannot be traced to the trafficker if seized by law enforcement.

17. Based on the aforementioned information, there is probable cause to collect identifying information for the next thirty days to establish and simplify the common identifiers of the Target Cellular Device(s) directly associated with GUTIERREZ-GONZALEZ for the purpose of collecting records about that cellular device’s use.

MANNER OF EXECUTION

18. Through training and experience, your Applicant has learned that cellular phones and other cellular devices communicate wirelessly across a network of cellular infrastructure, including towers that route and connect individual communications. When sending or receiving

a communication, a cellular device broadcasts certain signals to the cellular tower that is routing its communication. These signals include a cellular device's unique identifiers.

19. To facilitate execution of this warrant, law enforcement may use an investigative device that sends signals to nearby cellular devices, including the Target Cellular Device, and in reply, the nearby cellular devices will broadcast signals that include their unique identifiers. The investigative device may function in some respects like a cellular tower, except that it will not be connected to the cellular network and cannot be used by a cell to communicate with others. Law enforcement will use this investigative device when they have reason to believe that **Nester GUTIERREZ-GONZALEZ** is present. Law enforcement will collect the identifiers emitted by cellular devices in the immediate vicinity of the Target Cellular Device when the subject is in multiple locations and/or multiple times at a common location and use this information to identify the Target Cellular Device, as only the Target Cellular Device's unique identifiers will be present in all or nearly all locations. Once investigators ascertain the identity of the Target Cellular Device, they will cease using the investigative technique. Because there is probable cause to determine the identity of the Target Cellular Device, there is probable cause to use the investigative technique described by the warrant to determine the identity of the Target Cellular Device.

20. The investigative device may interrupt cellular service of cellular devices within its immediate vicinity. Any service disruption will be brief and temporary, and all operations will attempt to limit the interference cellular devices. Once law enforcement has identified the Target Cellular Device, it will delete all information concerning non-targeted cellular devices. Absent further order of the court, law enforcement will make no investigative use of information

concerning non-targeted cellular devices other than distinguishing the Target Cellular Device from all other devices.

AUTHORIZATION REQUEST

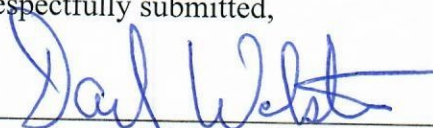
21. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41. The proposed warrant will also function as a pen register order under 18 U.S.C. § 3123.

22. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days from the end of the period of authorized surveillance. This delay is justified because there is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the person carrying the Target Cellular Device would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior, notify confederates, and flee from prosecution. *See* 18 U.S.C. § 3103a(b)(1). There is reasonable necessity for the use of the technique described above, for the reasons set forth above. *See* 18 U.S.C. § 3103a(b)(2).

23. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to identify the Target Cellular Device outside of daytime hours.

24. A search warrant may not be legally necessary to compel the investigative technique described herein. Nevertheless, I hereby submit this warrant application out of an abundance of caution.

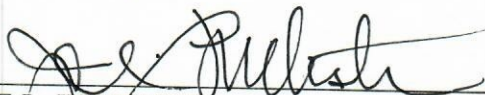
Respectfully submitted,



David L. Webster
Special Agent
Drug Enforcement Administration

Subscribed and sworn to before me

on August 3, 2018 8:45 AM



JOE L. WEBSTER
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Pursuant to an investigation of Nester Gutierrez-Gonzalez for a violation of 21 U.S.C. 841(a)(1); and 21 U.S.C. 846, this warrant authorizes the officers to whom it is directed to identify the cellular device or devices used by Nester Gutierrez-Gonzalez by collecting radio signals, including the unique identifiers, emitted by the cellular device or devices and other cellular devices in its vicinity for a period of thirty days, during all times of day and night.

Absent further order of a court, law enforcement will make no affirmative investigative use of any identifiers collected from cellular devices other than the devices determined to be possessed by Nester Gutierrez-Gonzalez. Once investigators ascertain the identity of the devices possessed by Nester Gutierrez-Gonzalez, they will end the collection, and any information collected concerning cellular devices other than the devices possessed by Nester Gutierrez-Gonzalez will be deleted.

This warrant does not authorize the interception of any telephone calls, text messages, or property. The Court finds reasonable necessity for the use of the technique authorized above. See 18 U.S.C. § 3103a(b)(2).